

July 31, 2003

IN RE: DOCKET NO. 2002-367-C & 2002-408-C

**COPY OF REPLY TESTIMONY OF DENNIS B. TRIMBLE FILED ON
BEHALF OF VERIZON SOUTH, INC. HAS BEEN DISTRIBUTED TO THE
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Mr. Gary E. Walsh
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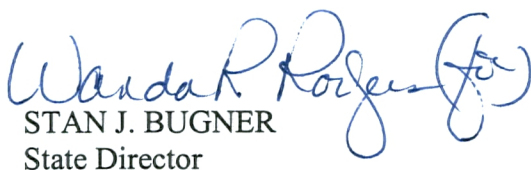
In Re: Docket 2002-367-C & Docket 2002-408-C

Dear Mr. Walsh:

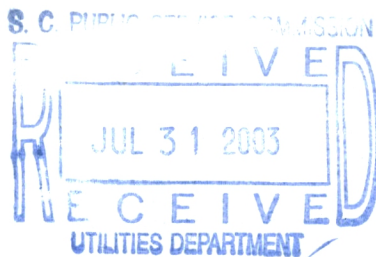
Enclosed you will find the original and twenty-five (25) copies of the Reply Testimony of Mr. Dennis B. Trimble which is being filed on behalf of Verizon South Inc. in the above referenced dockets which were combined by the Commission for hearing purposes.

Please be advised that the Parties of Record have been provided a copy of same as indicated on the attached Certificate of Service. Should you have any questions or require additional information do not hesitate to contact our office.

Respectfully,


STAN J. BUGNER
State Director

C: Steven W. Hamm, Esq.
Parties of Record



BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

IN RE:

DOCKET 2002-367-C - Generic Proceeding to)
Address "Abuse of Market Position")

CERTIFICATE OF SERVICE

DOCKET 2002-408-C - Generic Proceeding to)
Define The Term "Inflation-Based Index")

This is to certify that I have caused to be served this day, one (1) copy of the Reply Testimony of Mr. Dennis B. Trimble which is being filed on behalf of Verizon South Incorporated in the above referenced dockets by placing a copy of same in the care and custody of the United States Postal Service, first class postage prepaid to the following Parties of Record:

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SC PUBLIC SERVICE
COMMISSION

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA**

**GENERIC PROCEEDING TO ADDRESS)
THE DEFINITION OF "ABUSE OF)
MARKET POSITION")**

Docket No. 2002-367-C

**GENERIC PROCEEDING TO DEFINE)
THE TERM "INFLATION-BASED INDEX)**

Docket No. 2002-408-C

REPLY TESTIMONY OF

DENNIS B. TRIMBLE

ON BEHALF OF

VERIZON SOUTH INC.

S. C. PUBLIC SERVICE COMMISSION
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JULY 30, 2003

I. Introduction

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND TITLE.

A. My name is Dennis B. Trimble. I am employed by Verizon Services Group Inc. as Executive Director – Regulatory and am representing Verizon South Inc. and Verizon South Carolina (collectively “Verizon” or the “Company”) in this proceeding. My business address is 600 Hidden Ridge, Irving, Texas 75038.

Q. DID YOU PREVIOUSLY FILE DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REPLY TESTIMONY?

A. My reply testimony summarizes each party’s direct testimony regarding the appropriate definitions of the phrases “abuse of market position” and “inflation-based index” within the meaning of S.C. Code Ann. Section 58-9-576 (“Section 58-9-576”).¹ My reply testimony then explains Venison’s position concerning each party’s proposed definitions.

¹ ALLTEL South Carolina, INC. (AllTel”), BellSouth Telecommunications, Inc. (“BellSouth”), the Staff of the Public Service Commission of the State of South Carolina (“Commission”), the State of South Carolina Department of Consumer Affairs (“Consumer Advocate”), MCI WorldCom, Inc. (“MCI”), and United Telephone Company of the Carolinas (“United”).

II. Abuse of Market Position

Q. PLEASE SUMMARIZE EACH PARTY'S PROPOSED DEFINITION OF THE PHRASE "ABUSE OF MARKET POSITION."

A. Table 1 below contains a summary of each party's proposed definition of this phrase:

**Table 1
Proposed Definitions Of
"Abuse of Market Position"**

Party	Definition
AllTel	Anti-competitive behavior that involves pricing below incremental cost with the intent and effect of eliminating competition. ²
BellSouth	Anti-competitive pricing conduct that harms the competitive process. ³ Exercising market power is not an "abuse of market position." ⁴
Commission Staff	Any action that effectively prohibits a new firm from entering a market. ⁵ Commission Staff also alludes to an inconsistent concept -- abuse of market power (i.e., pricing too high) -- but does not expressly include this concept within the definition of abuse of market position. ⁶
Consumer Advocate	Agrees with Commission Staff's proposed definition. ⁷
MCI	The phrase "abuse of market position" is clear on its face and does not need to be further defined. Further defining this phrase would only serve to unduly limit the types of complaints that could be brought before the Commission. ⁸ In particular, the Commission should not define this phrase to mean "abuse of market power" as this would not be consistent with the ordinary definition of the word position, would not be consistent with the intent of the statute, and would expand the statute's meaning when it is clear on its face. ⁹

² Eve Direct Testimony at 8:22-25.

³ Ruscille Direct Testimony at 9:1-4; Taylor Direct Testimony at 11:8-10.

⁴ Taylor Direct Testimony at 10:6-16.

⁵ Spearman Direct Testimony at 3:15-16.

⁶ Id. at 2:12-19 and 9:2-11.

⁷ Buckalew Direct Testimony at 9:2-6

⁸ Darnell Direct Testimony at 5:5-16.

⁹ Id. at 6:6-14.

United	Anti-competitive pricing behavior (i.e., pricing too low) or behavior that could be characterized as an abuse of market power (i.e., pricing too high). ¹⁰
Verizon	Anti-competitive conduct resulting from predatory pricing or bundling that harms the competitive process. ¹¹

All of the parties (except potentially MCI) agree that the phrase “abuse of market position” includes “anti-competitive conduct that harms the competitive process,” which is the appropriate definition of the phrase.

Q. SHOULD THIS DEFINITION BE FURTHER REFINED TO REFLECT THE INTENT OF SECTION 58-9-576, AS SUGGESTED BY BELL SOUTH?

A. Yes. As Bell South makes clear, Section 58-9-576 is intended to prevent “pricing” abuses, and therefore the definition of this phrase should reflect the intent of this section.¹² More specifically, this phrase should be defined to mean “anti-competitive *pricing* conduct that harms the competitive process.”

¹⁰ Staihr Direct Testimony at 19:12-13 and 19:19-20.

¹¹ Trimble Direct Testimony at 4:12-13 and 6:1-2.

¹² Taylor Direct Testimony at 12:4-12 and 12:18-19; Ruscilli Direct Testimony at 10:5 – 11:3.

1 **Q. BELLSOUTH PROPOSED THAT THE COMMISSION ADOPT A “SAFE**
 2 **HARBOR” FOR PRICING CONDUCT THAT IS CLEARLY NOT AN**
 3 **ABUSE OF MARKET POSITION. DOES VERIZON SUPPORT THE**
 4 **ADOPTION OF THIS “SAFE HARBOR”?**

5 A. Yes. Bell South proposes that the Commission should adopt as a “safe harbor” a
 6 price floor of total service long run incremental costs. In other words, pricing
 7 conduct that results in prices at or above total service long run incremental cost
 8 would not be an abuse of market position.¹³ Adopting this “safe harbor” is
 9 appropriate and conservative for at least three reasons. First, the proposed price
 10 floor protects against cross subsidies and predatory pricing. Second, using this
 11 price floor as a safe harbor would establish a bright-line test that allows the
 12 Commission and the parties to avoid litigating non-meritorious complaints.
 13 Finally, antitrust law only requires the use of long run incremental costs (“LRIC”)
 14 as a general guideline for determination of potentially predatory prices. Bell
 15 South’s TSLRIC proposal exceeds this standard.

17 **III. Inflation-Based Index**

19 **Q. PLEASE SUMMARIZE EACH PARTY’S PROPOSED DEFINITION OF**
 20 **THE PHRASE “INFLATION-BASED INDEX.”**

21 A. Table 2 below contains a summary of each party’s proposed definition of this
 22 phrase:

¹³ It is important to understand that because this is a “safe harbor” test, pricing conduct that results in prices below total service long run incremental cost would not necessarily be an abuse of market position. See Taylor Direct Testimony at 42:14 – 43:7.

Table 2
Proposed Definitions Of
“Inflation-Based Index”

Party	Inflation-Based Index Formula	Recommended Inflation Index	Recommended Productivity Adjustment
AllTel	Not A Party On This Issue		
BellSouth	Inflation Index	Chain-type GDP-PI (“GDP-CPI”) ¹⁴	N/A
Commission Staff	Inflation Index	CPI or GDP Deflator (i.e., GDP-CPI) ¹⁵	N/A ¹⁶
Consumer Advocate	Inflation Index Minus a Productivity Adjustment	Recommended Inflation Index Not Specified	2 to 3 % ¹⁷
MCI	No Position	--	--
United	Not A Party On This Issue		
Verizon	Inflation Index	GDP-CPI ¹⁸	N/A ¹⁹

The parties generally agree that the Commission should adopt the gross domestic product chain-type price index (“GDP-CPI”) for the purposes of Section 58-9-576(B)(4). Only the Consumer Advocate urges the adoption of a productivity offset. As I discussed in my direct testimony, the adoption of a productivity offset would be inappropriate for the following reasons:

¹⁴ Taylor Direct Testimony at 53:4-7.
¹⁵ Spearman Direct Testimony at 10:8:21.
¹⁶ Spearman Direct Testimony at 4:17 - 5:8 and 9:3-14.
¹⁷ Buckalew Direct Testimony at 19:17 - 20:3.
¹⁸ Trimble Direct Testimony at 22:15-19.
¹⁹ Trimble Direct Testimony at 23:15 – 26:16.

- The phrase “inflation-based index” has a clear meaning: an index based on inflation, not an inflation index minus some assumed amount of productivity;
- evaluating the alleged productivity specifically related to basic local exchange service offerings would be an irrational endeavor since, as far as I know, no such study has ever been performed (nor, for that matter, do I believe that such a study is capable of being performed);
- the rates for most basic residential and single-line business local exchange services are already below competitive market levels, and therefore incorporating a productivity adjustment in the definition of an “inflation-based index” would be antithetical to the development of an efficient, competitive marketplace.²⁰

Q. MR. BUCKALEW STATES THAT HE IS UNAWARE OF ANY STATES THAT ALLOW BASIC LOCAL EXCHANGE RATES TO INCREASE BY INFLATION FACTOR WITHOUT A PRODUCTIVITY OFFSET.²¹ PLEASE COMMENT.

A. As an initial matter, this Commission should not be concerned with what complex arrangements have been historically adopted in other states in a monopoly environment or at the dawn of the 1996 Telecommunications Act. To the contrary, this Commission should only be concerned with: (1) the appropriate measure of inflation as required by Section 58-9-576 and (2) implementing

²⁰ Id. at 23:15 – 26:16. Regarding the development of an efficient, competitive marketplace, also see Taylor Direct Testimony at 55:3-7 and 56:3-5.

²¹ Buckalew Direct Testimony at 19:13-14.

1 policies that allow the market for basic local exchange offerings to migrate to an
2 efficient, competitive marketplace.

3
4 In any event, Mr. Buckalew's experience in this area is limited. Verizon
5 Communications Inc. ("Verizon Communications") operates in 28 states plus the
6 District of Columbia. In nine of those locations, it operates under rate-of-return
7 regulation. In 20 of those locations, it operates under an alternative form of
8 regulation ("AFOR"). Ten of those locations have pricing formulas that are based
9 on some measure of inflation (usually GDP-PI). Only six of those states still
10 incorporate an inflation-based index and a productivity offset.

11
12 **Q. DOES THE FEDERAL COMMUNICATIONS COMMISSION ("FCC")**
13 **STILL INCORPORATE A "PRODUCTIVITY OFFSET" IN ITS PRICING**
14 **RULES FOR INTERSTATE SERVICES?**

15 A. No, the FCC endured various legal actions and adverse court findings regarding
16 its rationales for selecting historic productivity factors.²² Thus with the release of
17 its CALLS Order in 2000, the FCC moved away from a productivity offset factor.
18 The FCC's CALLS Order describes the transition away from the productivity
19 factor as follows:

20 During the five-year term of the CALLS Proposal, the X-factor as adopted
21 herein *will not be a productivity factor* as it has been in past price cap
22 formulas. Instead, the X-factor is now a transitional mechanism to lower

²² *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000) ("CALLS Order"), *aff'd in part, rev'd in part, and remanded in part*, *Texas Office of Public Utility Counsel*, 265 F.3d 313 (5th Cir. 2001), para. 138.

access charges to target rates for switched access, and to lower rates for a specified time period for special access. Although the X-factor under the CALLS Proposal *will not be tied to price cap LEC productivity*, it will lower access charges over the term of the proposal.²³ (Emphases added)

Q. IF THE COMMISSION WERE TO CONCLUDE (ERRONEOUSLY) THAT IT SHOULD ADOPT A PRODUCTIVITY ADJUSTMENT, SHOULD IT DO SO BASED ON THE TESTIMONY CURRENTLY IN THIS DOCKET?

A. No. If the Commission were to decide that it should adopt a productivity offset applicable to the pricing of basic residence and single-line business local exchange offerings, it should establish a docket to gather expert testimony regarding this complex and likely contentious issue. Currently, only the Consumer Advocate has proposed a positive (albeit unsupported) range of values for a potential productivity offset. If the Commission decides that a non-zero productivity offset should be incorporated into the definition of an “inflation-based index”, then all parties must be able to augment the scant evidentiary record that is currently before the Commission on this issue.

Of course, the Commission should not change the meaning of the Section 58-9-576 now by adopting a productivity offset that is not even remotely suggested by a plain reading of the statute. Not only would this be a misconstruction of the statute, it would undermine this Commission’s efforts to establish efficient and fair regulation in South Carolina.

²³ CALLS Order, para. 160.

1 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

2 **A. Yes.**

3